**BANK OF TOKYO LTD.**

**v.**

**MOHD. ZAINI ARSHAD & ANOR.**

HIGH COURT MALAYA, KUALA LUMPUR
LIM BENG CHOON J
[ORIGINATING SUMMONS NO. S7-24(31)-1579-87]
16 MARCH 1990

***CONTRACT:*** *Assignment - Bank assignment - Intention of assignor - Consideration of the whole of the instrument - Whether complete assignment.*

***LAND LAW:*** *Priority - Equities - Two sales and purchase agreements in relation to same property - Effect of caveat - Failure to caveat - Doctrine of purchaser without notice.*

The defendant Z agreed to purchase the disputed premises from M and a sale and purchase agreement was executed between the parties on 3 July 1982.

The plaintiff bank BT granted Z a loan subject to Z assigning the full and entire benefit of the Maluri agreement to BT. A deed of assignment (the bank assignment) was executed between Z and BT. Z defaulted in their payments to BT and BT applied for an order of sale and asked that the manner of sale and reserve price etc., be fixed by the Senior Assistant Registrar (SAR) and that Z deliver to BT possession of the said property.

The Court granted BT's application. Before the auction date the intervenor M applied to intervene and to defer the auction date on the basis that an order of specific performance was made as a consequence of his application under O. 81 of the Rules of High Court 1980, of a sale and purchase agreement dated 13 December 1984 by which he had lawfully purchased the disputed premises.

M's application to intervene was allowed on 3 June 1987. On 7 July 1987, M applied to set aside the order for sale granted by the Court to BT on 26 April 1988.

On 17 November 1983, M had entered into a sale and purchase agreement with Z who had also executed deed of assignment under which Z had assigned his rights and interest under this sale and purchase to M.

M claimed that he had the legal and beneficial rights in respect of the disputed premises and that he had a caveatable interest; M had in an earlier civil suit, requested an order for the SAR to transfer the disputed premises to him and for it to be registered by the Land Administrator. M had also entered a caveat on 21 August 1984.

BT applied for a declaration that they were the assignees of the disputed premises and for the enforcement of the assignment by the sale of the disputed premises.

P argued that the bank assignment was not an absolute assignment; at most, it was an equitable assignment. Z conceded that the assignment to M was an equitable assignment and contended that as M had caveated the premises and BT had not, the equitable right of M was superior to BT's.

The questions before the Court were:

(i) Is the bank assignment an absolute one?

(ii) If the answer to the above is in the negative which of the parties has the better equity?

**Held:**

**[1]** The Court applied the legal principles in the cases of *Hughes* and *Nouvan* wherein it was held that the whole instrument of assignment must be considered regardless of the phraseology - if it is clear from the instrument as a whole that the intention was to pass all the rights or chose in action to the assignee, the case falls within s. 25 of the English Act, which is in *pari materia* with s. 4(3) of the Civil Law Act 1956; on a reading of the instrument, in this case, the bank assignment was a complete assignment as:

(i) Z agreed to assign all his benefits, estate, interest or rates whatsoever in the premises to BT and Z is holding the same as bare trustee for the plaintiff.

(ii) Z, as assignor agreed to allow BT, in the event of a default, to take possession of the disputed premises as well as the right and power to sell and assign the same as the "absolute unencumbered owner thereof."

**[2]** Section 2.02 of the bank assignment which provides for an execution of a charge under the National Land Code 1965 is an additional safeguard as at the date of assignment, Z had not been granted any registrable title under the Strata Titles Act 1985; in the event the title was granted to Z, the assignment would be replaced by the charge.

**[3]** As to priority of equities and the doctrine of purchaser without notice, the bank assignment was executed prior to the intervenor's assignment; M had actual notice of the bank assignment as manifested in the sale and purchase agreement. Also, M had covenanted that if Z fails to pay BT, M shall settle the same with BT and later recover the same from Z as a debt due from Z to M. Therefore it is clear that BT has an equity which is better than that of M's.

**[4]** The entry of a private caveat does not necessarily mean that the caveator has a better priority against another who has not as yet lodged one.

*[Judgment for BT; M's application to stay auction and to set aside order dismissed.]*

**Cases referred to:**

*Compania Columbiana de Sequros v. Pacific Steam Navigation Co. [1965] 1 QB 101*
*Hughes v. Pump House Hotel Company [1902] 2 KB 190*
*Nouvau Mont Dor (M) Sdn. Bhd. v. Faber Development Sdn. Bhd. [1985] CLJ (Rep) 231*
*Confort v. Betts [1891] 1 QB 737*
*Samuel Allen & Sons Ltd. [1907] 1 Ch 575*
*Lloyd v. Bank [1868] 3 Ch App 488*
*Reeves v. Pope [1914] 2 KB 284*
*Ng Kheng Yeow v. Chiah Ah Foo & Ors. [1987] CLJ (Rep) 254*
*Butler and Fairclough [1917] 23 CLR 78*
*Macon Engineers Sdn. Bhd. v. Goh Hooi Ying [1976] 2 MLJ 53*

**Legislation referred to:**

Civil Law Act 1956, s. 4(3)
Rules of the High Court 1980, O. 81
Supreme Court of Judicature Act 1873 [UK], s. 25(6)
Law of Property Act 1925 [UK], s. 136

**Other source referred to:**

*Snell's Principle of Equity* 28th Edn., p. 82

*For the Plaintiff - Chew Sin Far; M/s. P.G. Lim & Co.*
*For the Intervenor - N. Chandran; M/s. Adnan Sundra & Low*

**JUDGMENT**

**Lim Beng Choon J:**

On 30 April 1987 the plaintiff the Bank of Tokyo Ltd., applied by way of an originating summons for the following declaratory decree against the defendant, one Mohd. Zaini bin Arshad:

> A declaration that the plaintiff is entitled to be considered as being the assignees of the premises described as Parcel No. 1.4 by virtue of an assignment dated 8 December 1982 and made between the defendant and the plaintiff and further that the plaintiff is entitled to full and entire benefit of the sale agreement dated 3 July 1982 and made between Syarikat Maluri Sdn. Bhd. and the defendant.

Further and/or in the alternative the plaintiff prayed for:

> An order that the said assignment may be enforced by sale of the said premises to recover the sum of RM20,620.10 due to the plaintiff as at 31 January 1986 with interest accruing thereon at 10% p.a. on yearly rests from 1 February 1986 to date of payment.

The plaintiff was also asking for ancillary reliefs that the manner of the sale and reserve price and other directions with regard to or effecting the sale be fixed by the Senior Assistant Registrar of the Court and that the defendant should deliver to the plaintiff possession of the said premises.

The grounds upon which the plaintiff were relying in support of its application were set out in the affidavit in support affirmed by the general manager of the plaintiff bank and they may be briefly stated as follows. The defendant agreed to purchase the premises described as Parcel No. 1.4 ground floor, D Block, Taman Maluri 3rd Mile Jalan Cheras Kuala Lumpur erected on land held under HS(D) 15427 and HS(D) 15428 PT Nos. 1643 and 1644, Mukim of Ampang (hereinafter referred to as "the disputed premises") from Syarikat Maluri Sdn. Bhd. A sale and purchase agreement to the effect was executed by the two parties on 3 July 1982 (hereinafter referred to as "the Maluri agreement"). Apparently the defendant applied to the plaintiff for a loan to assist him to purchase the disputed premises. The plaintiff agreed to grant him a loan in the sum of RM17,500 provided the defendant agreed to assign the full and entire benefit of the Maluri agreement to the plaintiff together with all the rights, title and interests of the defendant therein. A deed of assignment was duly executed between the plaintiff and the defendant on 8 December 1982. I shall hereinafter refer to this deed of assignment as "the bank assignment."

It is useful at this stage to set out the provisions of the bank assignment which are material to this action. By s. 1.01(1) the defendant agreed to repay the loan by 240 monthly instalments of RM171.30 each. By s. 1.01(2) the defendant covenanted to repay to the plaintiff on demand the loan together with interest. As s. 2.01 declares the scope of the assignment it is appropriate to set out the provisions of that section in full and they are as follows:

> For better securing the payment of moneys and liabilities in this agreement contained the borrower beneficial owner hereby assigns to the bank all that the sale agreement and all the benefits thereof and that the estate interest or right whatsoever of the borrower in or to the property thereby contracted to be sold TO HOLD the same unto the bank subject only to redemption upon payment of all moneys and liabilities and interest thereon at the prescribed rate. PROVIDED ALWAYS that notwithstanding the assignment hereinbefore contained or any other provision of this assignment the borrower shall and hereby undertakes to continue to observe perform and be bound by all whatsoever conditions covenants and stipulations therein on the part of the borrower to be observed and performed contained in the sale agreement.

Section 2.01 is likewise important and should be set out in full. That section reads:

> Contemporaneously with the execution of these presents the borrower shall execute and deliver to the bank a charge under the National Land Code in a form and containing the terms and provisions prescribed by the bank (hereinafter called "the said charge") with the intent that the said charge shall take effect and operate as a legal charge upon the delivery by the developer of a separate document of subsidiary title of the said parcel and a duly executed transfer thereof.

By s. 3.01(5) the defendant agreed not to transfer, charge or otherwise howsoever deal with:

> the said parcel or any part thereof or any interest of the borrower therein ... without the written consent of the bank first had and obtained such consent to be given or withheld at the absolute discretion of the bank.

Article V of the bank assignment confers on the plaintiff certain rights and powers should the defendant make default of the matters stipulated therein. By s. 5.01 the defendant agreed *inter alia* that in the event that the defendant should:

> (1) make default in payment of any one or more of the instalments or any interest thereon or other sums of money agreed or covenant by the defendant to be paid or
>
> (2) fail to make payment of the balance of the money owing to the plaintiff bank after the expiration of notice referred to in s. 1.05.
>
> then in any such cases the loan and any interest thereon owing under the assignment shall immediately become payable by the defendant to the plaintiff and the plaintiff "shall forthwith become entitled to recover the same **and to exercise the rights and powers upon default herein this assignment and by law provided without any previous notice to or concurrence on the part of the borrower."** (Emphasis is mine).

Then there is s. 5.02(1) which confers the right of the plaintiff upon default by the defendant "to take possession of the said parcel or part thereof." Additional powers of the plaintiff are stipulated in s. 5.02(3) which reads:

> The right and power to sell and assign the said parcel as the **absolute unencumbered** owner thereof at such price or prices and in such manner as the bank shall in its absolute discretion think fit free from any interest of the borrower hereunder or otherwise and to apply the proceeds of sale in or towards the satisfaction of the loan and all principal and interest and other monies due to the bank under this assignment. (Emphasis is mine).

Finally there is s. 5.06 which talks of the defendant's liability to execute a legal charge as soon as there "shall be issued a subsidiary document of title."

When the application of the plaintiff came on for hearing on 26 April 1988 this Court granted an order in terms of the application in default of appearance and defence on the part of the defendant. The date of the auction sale of the disputed premises was directed to be carried out on 14 October 1988. However before the auction sale could be carried out one M Pragasam s/o Ignetius Municum (the intervenor) applied on 10 October 1985 to intervene in the present proceeding together with a plea to defer the auction sale of the disputed premises. In support of his application to intervene, the intervenor filed in an affidavit affirmed on the same date (encl. 24) in which he averred that on 16 May 1986 an order was made as a consequence of his application made pursuant to O. 81 of the Rules of High Court 1980 for specific performance of a sale and purchase agreement dated 13 December 1984 by which he had lawfully purchased the disputed premises. The O. 81 application was made in the course of a writ action instituted by the intervenor in a suit registered as civil suit F346 of 1984. The intervenor's application to intervene and to stay the auction sale was allowed by

this Court on 3 June 1987. On 7 July 1987 the intervenor followed up with an application to set aside the order for sale granted by this Court to the plaintiff on 26 April 1988. At the hearing of the intervenor's application the parties concerned agreed that the present proceeding of the plaintiff should be heard together with the intervenor's application made on 25 May 1989 in CSF346 of 1984 in which he is requesting for an order that the Senior Assistant Registrar of this Court be allowed to cause a transfer of the disputed premise to him and that the transfer be duly registered by the Land Administrator, Wilayah Persekutuan. I therefore directed a bundle of pleadings in respect of civil suit F346/84 be prepared to facilitate reference to it before the hearing of the intervenor's application to set aside the order dated 26 April 1988 granting on order for sale of the disputed premises to the plaintiff. From the said bundle of pleadings the events which led to the intervenor's institution of civil suit F346 of 1984 and the interlocutory proceedings emanating therefrom can be discerned and be briefly stated as follows.

On 17 November 1983 the intervenor entered into a sale and purchase agreement (the intervenor sale and purchase agreement ) for the purchase of the disputed premises and the purchase price was RM50,000. By a deed of assignment dated the same date executed by Mohd. Zaini bin Arshad the defendant in this proceeding through his attorney, one Mohd. Nazar bin Kasah who had been duly appointed under a power of attorney dated 16 November 1982 had assigned all his rights and interest under the sale and purchase agreement dated 3 July 1982 (intervenor's assignment) entered into by the defendant and Syarikat Maluri Sdn. Bhd., to the intervenor. It was further alleged that there was no restriction under that agreement for the defendant to assign his rights and interest thereunder. In the result the intervenor claimed that he had the legal and beneficial rights in respect of the disputed premises and that he had a caveatable interest on the said premises. Apparently the defendant and donee of the power of attorney failed to effect a legal transfer of the disputed premises to the intervenor - hence he was compelled to file the writ action in CSF346 of 1984. After service of the writ the defendants in the said civil suit failed to enter an appearance; neither did they put up any defence. The intervenor thereafter applied under O. 81 of Rules of High Court for specific performance of the intervenor's sale and purchase agreement dated 13 November 1983. This Court granted an order in terms of the intervenor's application made under O. 81 on 16 May 1986. The intervenor could not execute the order of the Court against the defendants in that suit as presumably they had disappeared from the scene. On 6 April 1989 the plaintiff in this action applied to intervene in the CSF346 of 1984 proceeding and also to set aside this Court's order to transfer the disputed premises to the intervenor. As the intervenor had also entered a caveat on 21 August 1984 in respect of the land on which the disputed premises was erected the plaintiff also prayed that the caveat be removed. Before the plaintiff's application to intervene in that suit could be heard the intervenor applied for an order directing the Senior Assistant Registrar to effect the transfer of the disputed premises to him as stated earlier.

At the hearing of the plaintiff's originating summons for the declaratory order and the alternative and ancillary orders mentioned above and the application of the intervenor to set aside the order of the Court dated 26 April 1988 for sale of the disputed premises, on 10 October 1989, Counsel for the plaintiff contended that:

(i) firstly under the power of attorney created by the defendant it was specifically stated that the donee, Mohd. Nazar bin Kasah, should pay on behalf of the donor all sums due to the plaintiff bank before the donee could assign or sell the disputed premises to a third party;

(ii) pursuant to the intervenor's agreement with the defendant it was clearly stated in the recitals that a deed of assignment had been entered into between the defendant and the plaintiff whereby the defendant had assigned all his rights, title and interest in the property to the plaintiff. Furthermore under clause 4 the defendant agreed to pay the plaintiff bank such sums of money "as shall be sufficient to redeem the property." More importantly it was stipulated in clause 9 thereof that should the defendant fail to pay the amount due to the plaintiff bank the intervenor agreed to settle the same and thereafter recover from the defendant "as a debt owing by the vendor to the purchaser". These provisions therefore clearly indicated to the intervenor that the moneys due to the plaintiff must be paid first before the intervenor could claim any right to the property.

(iii) in executing the purported assignment the consent of Syarikat Maluri Sdn. Bhd., was never obtained when the sale and purchase agreement entered into by the Syarikat and the defendant restricted such an assignment without consent of the Syarikat (see clause 5.07 of the deed of assignment). Furthermore the bank assignment likewise forbade such assignment without consent (see s. 3.01 of the banker's assignment). In the result, so said Counsel, the assignment was invalid or ineffective.

Counsel for the defendant, on the other hand, argued that the bank assignment was not an 'absolute assignment'. At the most it was, so said Counsel, an equitable assignment. He, however, conceded that the assignment to the intervenor was likewise an equitable assignment. But, so said he, as the intervenor had caveated the land on which the disputed premises was erected and the plaintiff had not done so, the equitable right of the intervenor must be superior to that of the plaintiff.

To my mind the questions that I have been asked to answer are really these.

(i) Is the bank assignment an absolute one?

(ii) If the answer to (i) is in the negative which of the party has the better equity?

In raising the issue that the bank assignment is not an absolute assignment, the Counsel for the defendant is trying to prevent the plaintiff from relying on the statutory protection of legal or equitable choses in action pursuant to s. 4(3) of the Civil Law Act which reads:

> any absolute assignment, by writing, under the hand of the assignor, not purporting to be by way of charge only, of any debt or other legal chose in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim the debt or chose in action, shall be, and be deemed to have been, effectual in law, subject to all equities which would have been entitled to priority over the right of the assignee under the law as it existed in the state before the date of the coming into force of this Act, to pass and transfer the legal right to the debt or chose in action, from the date of the notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor.

It is to be noted that an assignment which complies with the statutory provision has the effect of conferring on the assignee the right in the legal chose in action. In other words the rights of the assignor in respect of the subject matter of the assignment are duly transferred to and vested on the assignee - see *Compania Columbiana de Sequros v. Pacific Steam Navigation Co.* [1965] 1 QB 101 where it was held that the insurer who paid the loss and took assignment of the insured's right could keep all proceeds even if they exceeded the loss.

Now the English counterpart of s. 4(3) of our Civil Law Act 1956 is s. 25(6) of the English Judicature Act 1873 (now replaced by s. 136 of the Law of Property Act 1925). It has been held by the English Courts that for an assignment to take effect under the 1873 Act there

are four conditions which must be satisfied. For the purpose of the present action I need only to consider one of the four conditions since there is no dispute that the remaining three conditions had been complied with. The one condition to be considered is whether the bank assignment is an absolute assignment and not by way of charge only. The judicial definition of "an absolute assignment" is that there must be an intention on the part of the assignor to pass to the assignee complete control of any debt or money payable to or any legal chose in action of the assignor. In testing whether there is such an intention the whole instrument of assignment must be considered regardless of the phraseology adopted in some particular part of it. Thus in *Hughes v. Pump House Hotel Company* [1902] 2 KB 190 (which case was brought to my attention by the Counsel for the intervenor) Matthews LJ said at pp. 193 to 194:

> In every case of this kind, all the terms of the instrument must be considered; and, whatever may be the phraseology adopted in some particular part of it, if, on consideration of the whole instrument, it is clear that the intention was to give a charge only, then the action must be in the name of the assignor; while, on the other hand, if it is clear from the instrument as a whole that the intention was to pass all the rights of the assignor in the debt or chose in action to the assignee, then the case will come within s. 25, and the action must be brought in the name of the assignee.

This principle has been cited with approval by our then Federal Court in *Nouvau Mont Dor (M) Sdn. Bhd. v. Faber Development Sdn. Bhd.* [1985] CLJ (Rep) 231 (which case was again brought to my attention by Counsel for the intervenor) where Seah FJ after citing the principle enunciated in the *Hughes v. Pump Hotel Co. Ltd.* case went on to say at p. 234:

> While, on the other hand, if it is clear from the instrument as a whole that the intention was to pass all the rights of the assignor in the debt or chose in action to the assignee, then the case will come within s. 25 and the action must be brought in the name of the assignee.

I should point out that the 's. 25' referred to by Seah FJ is s. 25 of the English Judicature Act 1873 and the issue as determined by the then Federal Court is that if the assignment is an absolute assignment the assignor has no right to sue in its own name and the action should be brought by the assignee.

Applying the legal principle enunciated in the two cases cited above I have no doubt that the bank assignment is an absolute assignment and I say so for these reasons. In the first place the assignor agreed to assign all his benefits, estate, interest or right whatsoever in the premises in question to the plaintiff. The defendant is holding the same in trust for the plaintiff but only as a bare trustee since he has assigned all his legal rights to the plaintiff - see *Confort v. Betts* [1891] 1 QB 737 at 740 & 741. In the second place the defendant as assignor agreed, pursuant to s. 5.02 to allow the plaintiff, in the event of default committed by him under the bank assignment, to take possession of the disputed premises as well as the right and power to sell and assign the same as the "absolute unencumbered owner thereof."

The learned defence Counsel, however, argued that since s. 2.02 of the bank assignment talked of a contemporaneous execution of a charge under the National Land Code (NLC) it must follow that the said assignment was not an absolute assignment but an assignment by way of a charge. With regret I cannot agree with his contention. From my reading of that section, it merely provides an additional safeguard in that the defendant should, apart from the said assignment, also execute a charge under the NLC presumably in escrow. This safeguard is necessary because at the time when the said assignment was made the defendant had not been granted any registrable title under the Strata Titles Act 1985. The charge in escrow therefore is necessary in the event that upon the grant of a title to the defendant the

assignment would end and be replaced by the charge. This proposition is fortified by s. 5.06 entitled "Execution of Legal Charge" which says that as soon as there be an issue of a subsidiary document of title to the defendant the bank could then complete and perfect the said charge over the land.

In the ultimate analysis of the bank assignment and upon a careful scrutiny of the said assignment I am satisfied that the same is an absolute assignment.

However should I be held wrong in arriving at the aforesaid conclusion, I still need to consider the second question posed earlier namely which of the two parties has the better equity? In any search for an answer to this question I must bear in mind that at law as in equity the basic rule is that rights and interests primarily rank in order of creation. The doctrine of *qui prior est tempore potior est jure* - he who is earlier in time is stronger in law - will apply where the equities are equal and neither claimant has the legal estate - see *Samuel Allen & Sons Ltd.* [1907] 1 Ch 575. An important qualification to the basic rule is the doctrine of the purchaser without notice. A subsequent purchaser must have no notice of the earlier equitable interest. From this doctrine it is clear that a subsequent purchaser is affected by notice of an equity when there is:

(i) actual notice: where the equity is within his own knowledge - see *Lloyd v. Bank* [1868] 3 Ch App 488 where it was held that a purchaser could not safely disregard information from any source if it was of such a nature that a reasonable man or man of business would act upon the information;

(ii) constructive notice: where the equity would have come to his own knowledge if proper enquiries had been made and;

(iii) imputed notice: where his agent as such in the course of the transaction had actual or constructive notice of the equity - see *Reeves v. Pope* [1914] 2 KB 284.

Now in the present case the bank assignment was executed on 8 December 1982 while the intervenors' assignment was executed on 17 November 1983 (see p. 59 of the bundle of pleadings). There is also no doubt that the intervenor had actual notice of the bank assignment as manifested in the fifth recital of the intervenor sale and purchase agreement. What is more important is that under clause 9 of the said agreement the intervenor covenanted that should the defendant fail to pay to the plaintiff bank "on or before 31 January 1984 such sums of money as shall be sufficient to redeem the said property pursuant to clause 4 hereof the purchaser (meaning the intervenor) shall settle the same with the bank and thereafter recover the same from the vendor (the defendant) as a debt due and owing by the vendor to the purchaser." Under such circumstances and bearing in mind the principles adumbrated above it is manifestly clear that the plaintiff has an equity which, in my opinion, is better than that of the intervenor. In further support of this proposition I need only to cite the following passage of *Snell's Principle of Equity* 28th Edn., p. 82:

> Whether the assignment is legal or equitable, the assignee takes subject to equities having priority over the right of the assignee. The assignee of a thing in action cannot acquire a better right than the assignor had, or in other words, the assignee takes the thing in action subject to all the equities affecting it in the hands of the assignor which are in existence before notice is received by the debtor.

The learned Counsel for the intervenor, however, argued that the plaintiff had failed to enter a caveat to protect its right while the intervenor had caveated the land on which the building containing the disputed premises was erected on 18 August 1984. In such a situation, so

said the learned Counsel, priority must be given to the intervenor's assignment. I cannot accept such a proposition. It might well be correct in saying that in certain circumstances caveat established priority. But such a proposition merely shifts the onus of to the holder of a subsequent equity to show facts which rendered it inequitable for the holder of a prior equity to insist as against him on that priority. An entry of a private caveat does not therefore necessarily mean that the caveator has a better priority against another who has not as yet lodged one - see *Ng Kheng Yeow v. Chiah Ah Foo & Ors.* [1987] CLJ (Rep) 254 at 256. An Australian case of *Butler and Fairclough* [1917] 23 CLR 78 at 84 sums up the position where it was stated that the effect of a caveat:

> is not to enlarge or add to the existing proprietory rights **if he has any.**

A similar approach was adopted by our then Federal Court in *Macon Engineers Sdn. Bhd. v. Goh Hooi Ying* [1976] 2 MLJ 53 at 55 where Gill CJ (Malaya) said:

> The entry of the caveat does not make his claim or right either better or worse.

On principle and authority I cannot therefore accept the proposition that just because the intervenor had caveated the land in question in 1984 the priority of the plaintiff should be reduced and be subservient to the equity of the intervenor.

In view of what have been stated above, judgment must be given to the plaintiff and the order of this Court dated 26 April 1988 is sustained. On the other hand the application of the intervenor to stay the auction and to set aside the said order is dismissed with costs.

Also found at [1991] 2 CLJ 989